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• (0815)

[English]

The Chair (Patrick Weiler (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.)): I call this meeting to order.

[Translation]

Welcome to meeting number 15 of the Standing Committee on Fisheries and Oceans.

[English]

I want to start by acknowledging that we are gathered on the ancestral, unceded territory of the Algonquin Anishinabe people, and I express gratitude that we're able to do the important work of this committee on lands they've stewarded since time immemorial.

Pursuant to Standing Order 108(2), the committee is meeting to continue its study on the review of the Fisheries Act.

[Translation]

Today's meeting is taking place in hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely via Zoom.

[English]

Before we continue, I would like to ask that all in-person participants consult the guidelines written on the cards on the table. These measures are in place to prevent audio and feedback incidents and to protect the health and safety of all participants, particularly the interpreters. You'll also notice a QR code on the card, which links to a short awareness video.

I would like to make a few comments for the benefit of witnesses and members.

Please wait until I recognize you by name before speaking.

[Translation]

For interpretation for those on Zoom, you have the choice at the bottom of your screen: floor, English or French.

For those in the room, you can use the earpiece and select the desired channel.

[English]

This is a reminder that all comments should be addressed through the chair.

[Translation]

For members in the room, if you wish to speak, please raise your hand. For members on Zoom—there are a lot of them today—please use the “raise hand” function.

The clerk and I will manage the speaking order as best we can. We appreciate your patience.

[English]

With that, I would like to welcome our witnesses.

We have Shannon O'Connor, deputy director of public prosecutions, and Emma Beauchamp, director and general counsel, both from the Public Prosecution Service of Canada.

We also have Hannah Rogers, director general, environmental enforcement, from the Department of the Environment.

We are going to start with opening statements from the witnesses for five minutes or less, beginning with Ms. O'Connor.

[Translation]

Shannon O'Connor (Deputy Director, Public Prosecutions, Public Prosecution Service of Canada): Thank you very much.

Good afternoon, Mr. Chair and honourable members of the committee.

I am pleased to appear before you today to provide information about the role of the Public Prosecution Service of Canada, or PPSC, in prosecuting offences under the Fisheries Act and its regulations.

Before I begin, I would like to acknowledge that the land on which I am speaking is located on the unceded territory of the Anishinabe Algonquin nation, which has been present in this place since time immemorial.

I will start by taking a little time to talk about the PPSC. It is a national, independent and accountable prosecuting authority whose main objective is to prosecute federal offences. As set out in the Director of Public Prosecutions Act, the Director of Public Prosecutions acts under and on behalf of the Attorney General of Canada in, among other things, initiating and conducting prosecutions, advising law enforcement agencies and issuing guidelines to prosecutors on the conduct of prosecutions.

The PPSC has approximately 600 federal prosecutors and several hundred private sector agents. It has regional offices in all major cities in Canada, and in the three territories. It also has dedicated regulatory and economic crimes prosecutions teams across the country who prosecute offences pursuant to over 75 regulatory and economic statutes and regulations, including the Fisheries Act.

Along with conducting prosecutions, PPSC prosecutors provide advice and support to regulatory enforcement agencies through training initiatives and bilateral meetings. Prosecutors also provide advice to our regulatory partners at the investigation stage and receive support from them at the trial stage. This regular collaboration with our regulatory partners promotes dialogue and improves investigations and prosecutions.

• (0820)

[English]

Prosecutors contribute directly to the safety and security of Canadians. They play a key role in the criminal justice system by serving a truth-seeking function in criminal proceedings, as the role of the prosecutor is not to seek a conviction at all costs. At the same time, Crown counsel must be strong and effective advocates. Our role is to effectively lay before a trier of fact credible evidence relevant to an alleged offence firmly and to its legitimate strength, but also fairly.

Prosecutors act independently in conducting prosecutions and advising investigative agencies. This independence ensures that justice is impartial and that cases are handled based on facts without improper interference.

In conducting prosecutions, PPSC prosecutors are guided by the rules and guidelines in our PPSC desk book, which is publicly available. It sets out the principles that all federal prosecutors must follow in the exercise of their prosecutorial discretion.

An important guideline in our desk book is guideline 2.3 with respect to the decision to prosecute. This guideline was updated in 2023, prompted by an ongoing assessment of our policies that focused on providing clear guidance to prosecutors on how to be more proactive and conscious about recognizing bias, discrimination and other factors that contribute to overrepresentation in the criminal justice system.

As set out in guideline 2.3, to determine whether a prosecution should proceed, we ask ourselves whether there is a reasonable prospect of conviction and whether it is in the public interest to prosecute. This is our decision-to-prosecute test. If the charges do not satisfy both parts of this test at any point in time in the prosecution, the prosecutor will end the prosecution.

Each file is always assessed individually based on the specific circumstances of the case. All persons charged with offences, including Fisheries Act offences, can expect the PPSC to conduct prosecutions in a manner that is equitable, objective and independent.

Thank you.

The Chair: Thank you very much, Ms. O'Connor.

Next we're going to Hannah Rogers for five minutes or less.

Hannah Rogers (Director General, Environmental Enforcement, Department of the Environment): Good morning, Mr. Chair and committee members.

My name is Hannah Rogers, and I've been the director general of the environmental enforcement directorate at Environment and Climate Change Canada for approximately five years.

[Translation]

Thank you for the opportunity to appear before the committee to discuss the Fisheries Act and Environment and Climate Change Canada's role in its enforcement.

I would like to begin by acknowledging that I am speaking to you from the traditional territory of the Algonquin Anishinabe nation. I am reminded every day that our work to protect fisheries and water resources supports our shared responsibility to be good stewards of the land—an important value long upheld by indigenous peoples.

• (0825)

[English]

Let me start by outlining ECCC's role in enforcing the Fisheries Act.

Our department is responsible for administering and enforcing the pollution prevention provisions of the act. These provisions prohibit the release of substances into water that are deleterious to fish unless expressly authorized by regulation. This is one of Canada's most important legislative tools for safeguarding fisheries resources and protecting our waters from pollution. Its requirements apply broadly to all Canadian fisheries waters.

ECCC created a separate branch, our enforcement branch, in 2005, following a standing committee report calling for an independent and centralized enforcement agency to ensure the independence of enforcement.

Our mandate is both broad and complex. We operate in every province and territory, with about 266 trained officers who enforce the laws and regulations across a wide range of industrial and other activities. This includes the enforcement of several regulations made under the Fisheries Act that authorize the release of deleterious substances but under strict and highly controlled conditions. To date, seven such regulations have been developed, including those for the metal and diamond mining sector, the pulp and paper sector, and municipal waste-water systems.

Our enforcement officers conduct inspections to verify compliance with the Fisheries Act in accordance with the publicly available compliance and enforcement policy for the habitat protection and pollution prevention provisions of the Fisheries Act. This policy establishes the principles of fair, predictable and consistent enforcement, and outlines the full suite of available enforcement responses. It applies nationally to all officials exercising regulatory authority.

If officers have reasonable grounds to believe there has been an alleged violation, they may take a range of actions, including warnings, directions and prosecutions, to bring parties into compliance on a case-by-case basis. Of course, ECCC enforcement officers cannot be everywhere at once. For this reason, our organization uses a risk-based approach to determine where to focus our enforcement efforts. This ensures that resources are directed to sectors and activities with the highest risk of non-compliance and the greatest potential to harm the environment or human health. It also supports departmental priorities, such as incident responses and referrals.

In the 2024-25 fiscal year, under the Fisheries Act, ECCC enforcement conducted 2,458 inspections, which led to 18 new investigations. An additional 47 investigations were carried over from previous years due to their complexity and scope. Officers issued 160 warning letters and 63 directions, and four files were recommended for prosecution during this period.

There were 10 convictions under the Fisheries Act, resulting in approximately \$14 million in penalties and fines. Of this amount, \$13,930,000—almost all of it—was directed to the environmental damages fund, which supports projects that benefit ecosystems and communities across Canada.

ECCC takes environmental protection very seriously and will act against polluters when appropriate. Our officers are resourceful and use all tools available to address non-compliance.

Over time, enforcement officers have noted various challenges that impact the effective enforcement of the Fisheries Act. We are modernizing our approach by equipping officers with new technologies, such as satellite imagery, drones and remote sensing. In addition, we are examining whether administrative monetary penalties—recommended by stakeholders and by the 2019 commissioner of the environment and sustainable development's report entitled "Protecting fish From Mining Effluent"—could enhance our ability to address low- and medium-severity violations and increase overall efficiency.

Thank you, Mr. Chair and members of the committee. I would be pleased to answer any questions today.

The Chair: Thank you very much, Ms. Rogers.

That concludes our opening remarks.

We're going into the first round of questioning—the six-minute round—starting with Mr. Arnold.

Mel Arnold (Kamloops—Shuswap—Central Rockies, CPC): Thank you, Mr. Chair, and thank you to the witnesses for being here.

As you know, we're reviewing the 2018-19 changes to the Fisheries Act. Ms. Beauchamp, could you provide to the committee in

writing how many investigations have been referred to PPSC by DFO for every year since 2018, and how many charges PPSC has approved for each referral from DFO?

Emma Beauchamp (Director and General Counsel, Public Prosecution Service of Canada): We can look into the statistics that are available. We don't necessarily have the same tracking mechanisms as DFO in terms of what files are referred to us and the charges that are being laid.

Statistics are not necessarily the most representative way of determining how we prosecute the offences that are referred to us. We apply a two-pronged test, as mentioned by my colleague Ms. O'Connor, when we determine whether charges should be approved, and it's based on a reasonable prospect of conviction and the public interest.

● (0830)

Mel Arnold: Our stakeholders, the people who come to us, would certainly like to know those numbers. They're very relevant to them. That's the reason I ask.

Are you able to provide the number of investigations referred to your department and how many are actually approved?

Emma Beauchamp: We can certainly endeavour to do that.

Mel Arnold: Thank you very much.

Ms. Beauchamp, considering some of the evidence this committee has received in recent weeks, it's very important that we understand how PPSC decides who to prosecute and who not to prosecute.

The PPSC desk book that was mentioned in your opening remarks states:

Crown counsel must only proceed with prosecutions where two conditions are met:

1. There is a reasonable prospect of conviction; and
2. The prosecution is in the public interest.

When PPSC does this type of assessment of charges relating to fish harvesting, does DFO come to PPSC with the charges already defined or recommended, or do DFO and PPSC have conversations about the circumstances and actions in question and what the corresponding laws and regulations are, and then determine what charges are appropriate?

Emma Beauchamp: PPSC and DFO have an ongoing dialogue during both the investigative stage and the prosecution stage. In other words, DFO has independent discretion with respect to how and what they are going to investigate. We provide investigatory assistance during the investigative stage. Certainly, what the evidence sustains—the appropriate charge—is part of the ongoing dialogue.

Ultimately, whether or not to move forward with charges is PPSC's independent discretion based on, as you just referenced, our two-pronged test, but we have an ongoing and engaged dialogue with our enforcement partners and with ECCC.

Mel Arnold: When determining the first factor for prosecution—whether there's a reasonable prospect of conviction—I assume that PPSC must assess both the activities in question and the applicable laws and regulations. Is that a fair assumption?

Emma Beauchamp: Yes, it is one of the factors. There are a considerable number of factors we will assess, the most important being whether or not we have available admissible evidence, but there are other factors we will take into account at the reasonable prospect of conviction stage. Available defences and possible charter applications are factors we will take into account when we are determining whether or not we have a reasonable prospect of conviction.

Mel Arnold: For potential charges related to possible fisheries harvesting offences, what laws and regulations would the PPSC measure the alleged offence against?

Emma Beauchamp: I'm sorry; I might not have understood your question correctly.

Mel Arnold: For potential charges related to possible fish harvesting offences, what laws and regulations does PPSC measure the alleged offence with or against?

Emma Beauchamp: Generally, the offence we look at will be provided for in the Fisheries Act or in its related regulations, and those are the offences we look at when we're evaluating what charges should be laid when referred by DFO.

Mel Arnold: As you know, this committee is studying the 2019 changes to the act. Are you aware that Bill C-68 in 2019 established in the Fisheries Act a new definition of the word "laws"? It is in section of the current act.

Emma Beauchamp: I'm not familiar with the new definition, but I would be happy to look at it.

Mel Arnold: The Fisheries Act definition of "laws", established in Bill C-68, states that the word laws "includes the by-laws made by an Indigenous governing body".

Has DFO or any other federal entity provided PPSC with all the laws of every indigenous governing body with which the Crown has finalized fisheries resources reconciliation agreements or other agreements related to fish harvesting?

• (0835)

Emma Beauchamp: They've not been provided directly, but if a recommendation were made to lay a charge with respect to an indigenous bylaw, they would certainly provide us with the text of the bylaw.

Mel Arnold: Fisheries officers, the C and P staff, then, should be provided with the information that's in the laws and bylaws that are considered law.

Emma Beauchamp: I can't speak to what DFO officers receive or have available to them, unfortunately.

The Chair: Thank you very much, Mr. Arnold.

Next we are going to Monsieur Cormier for six minutes.

[Translation]

Serge Cormier (Acadie—Bathurst, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses for being with us today.

Ms. Beauchamp or Ms. O'Connor, for those who follow our work, and even for some of our colleagues around the table, the law can sometimes be complicated and technical. It does take a few explanations to understand how this whole prosecution process works.

Can you give us a typical example of a group that is arrested under the Fisheries Act? It is probably the Department of Fisheries and Oceans or its officers who decide whether or not to prosecute. Can you tell us how you go about conducting a proper prosecution?

Shannon O'Connor: Yes, absolutely.

I will begin, and then my colleague Ms. Beauchamp can add to my explanations. We hope we can provide some clarity.

Every case and every situation is different, but typically, when DFO officers are investigating a situation and think it might be appropriate to prosecute, they talk to us. They come to the regional office to speak to a prosecutor responsible for regulatory prosecutions to discuss the case. For less complicated or more ordinary cases, sometimes there is no discussion. For more complicated cases, such as matters—

[English]

Mel Arnold: I'm sorry to interrupt. The chair is missing.

We're not getting interpretation.

Shannon O'Connor: Oh, I apologize. I'll hold on for a moment.

Mel Arnold: That's okay.

The Chair: We're going to suspend for a minute while we figure this out.

• (0835) _____ (Pause) _____

• (0840)

[Translation]

The Chair: Let us resume.

Mr. Cormier, please start over. You have the floor for six minutes.

Serge Cormier: Thank you very much.

Ms. O'Connor, for the average person, it can be difficult to understand how things work when DFO officers come to you to lay charges and how you determine whether a case should be brought before the courts, which can lead to fines and even imprisonment, I suppose, in some cases. Can you walk us through that process?

Shannon O'Connor: It depends on the situation that DFO officers have uncovered. For less complicated or less serious matters, when officers conduct an investigation and lay charges, the file is sent to the PPSC and we review it. To determine whether we're going to prosecute, we consider whether there's a reasonable prospect of conviction and whether prosecution is in the public interest. If the answer to both questions is yes, we conduct the prosecution to the end. In more complicated situations, where investigators have questions, we have a dialogue.

So we certainly have a pretty close relationship with all of the investigative bodies across the country, and with DFO. If officers have questions or want to get a prosecutor's opinion on a situation before laying charges, we discuss it with them and give them our opinion so they can make an independent decision. When a file is referred to us, once again, we consider whether there is a reasonable prospect of conviction and whether prosecution is in the public interest. If so, we take it to court. It generally takes months to complete a case from start to finish. If there is a finding of guilt, the sentence is determined.

Serge Cormier: Okay.

Ms. O'Connor, I'm going to raise something that is always difficult to discuss; we don't want to be taken out of context.

You have probably heard of a recent report about illegal fishing, whether in commercial or first nations fisheries. Over the past few years, there has been a lot of talk in the country and in the fishing industry about illegal fishing, especially by first nations.

Earlier, you said that when a decision is made to prosecute, you discuss the matter with DFO officials to determine whether it is appropriate to prosecute, in which case all available evidence is probably considered.

When it comes to prosecutions involving first nations, are there cases where you might decide to be more lenient, so to speak, or do you fully enforce the Fisheries Act? Do you really go by the act or, depending on the situation, are you more cautious in the interest of reconciliation? When you arrest a certain group, are you more cautious because the public might view it negatively?

Do you have those discussions about the challenges that DFO officers face when it comes to prosecutions, especially if it's a first nations group?

Shannon O'Connor: Generally, yes, absolutely.

We discuss a lot of aspects of our prosecution files. When difficult situations arise in our communities, that is something that the Public Prosecution Service of Canada considers independently.

Those are touchy situations to manage, and I understand that it is also difficult to explain, but specific factors are set out in the Public Prosecution Service of Canada Deskbook. Guideline 2.3 of that guide tells us what to do when there are public interest issues, when there is significant damage to the community, such as a frequently recurring situation that causes a lot of damage to the community. That is a factor we consider before deciding whether or not to prosecute, if we have to conduct—

• (0845)

Serge Cormier: What do you mean by a lot of damage to the community? Do you mean that prosecuting a certain group could create tension in the community?

Shannon O'Connor: No, what I meant is that, in the case of the fishery, the matter affects the resource itself and causes a lot of problems to that resource. If we consider that it is an environmental issue, but—

Serge Cormier: I'm sorry to interrupt, but I only have a minute left—

Shannon O'Connor: I'm sorry. Go ahead.

Serge Cormier: Earlier, you said something to the effect that, when DFO officers discuss a prosecution with you, there could be some discretion. What do you mean by "discretion"? Do you mean discretion to prosecute or lay charges? Is discretion exercised?

Shannon O'Connor: DFO officers and prosecutors have discretion. What I mean is that sometimes DFO officers lay charges without talking to us. That's generally in cases that are less serious or less complex. We can discuss those cases—and we encourage them to do so—before charges are laid, to make sure that we are working together within our respective mandates.

The Chair: Thank you very much, Mr. Cormier.

Mr. Deschênes, you are up next and you have the floor for six minutes.

Alexis Deschênes (Gaspésie—Les Îles-de-la-Madeleine—Lis-tuguj, BQ): Good morning, everyone. I want to thank the witnesses for being here.

Ms. O'Connor, my questions are for you. Basically, I want to understand the obstacles to enforcement of the act, as reported to us by people on the ground. So I'm glad you're here so that we can talk about the rules applied by prosecutors to determine whether or not charges will be laid.

I read section 2.3 of the Canadian Public Prosecution Service Deskbook. I would you like to help me understand how it is interpreted in everyday life. First of all, your director, George Dolhai, already explained some things in August 2024. In a statement, he said that, as part of the decision-making process as to whether or not to prosecute, prosecutors must consider the evidence as well as the public interest, taking into account the potential impact of systemic discrimination or racism.

When your director says that the impact of systemic discrimination or racism must be taken into account, what does that mean? Does that have to be taken into account when deciding whether or not to lay charges?

Shannon O'Connor: The second question we ask when deciding whether or not to lay charges is the following: Is prosecution in the public interest? To answer that question, we look at factors such as the overrepresentation of indigenous people in the criminal justice system, for example.

Alexis Deschênes: With all due respect, I note that, in the guide, the issue of discrimination seems to come up at both stages.

We understand that the first question the prosecutor asks is whether there is a reasonable prospect of conviction. The guide says: “For example, when the case against an accused is not very strong and they have personal circumstances that are mitigating, Crown counsel should consider not proceeding. These circumstances may include an accused who has been subject to systemic discrimination.”

Is there not a reasonable perception, on the part of any prosecutor, that all first nations people are victims of systemic discrimination?

• (0850)

Shannon O'Connor: I'm glad you asked that question, because that is something that is something we talk about a lot at the Public Prosecution Service of Canada. It is important for us to consider factors related to Canada's history and overrepresentation, but it is also important to act independently and enforce Canada's laws. So that is something we always talk about.

Alexis Deschênes: Could we not agree that all indigenous people in Canada experience systemic racism or discrimination in one way or another?

Shannon O'Connor: I could talk about how the Public Prosecution Service of Canada manages that issue. When an accused is indigenous, their situation is considered to see if it may have been affected by discrimination or racism.

As to the reasonable prospect of conviction, you're absolutely right. Bias and racism are not factors that we consider. In making our decision, however, if there is ultimately a reasonable prospect of conviction, but that prospect is not very strong, and if prosecution is not necessarily in the public interest, we weigh the pros and cons.

Alexis Deschênes: Now let's talk about the public interest.

I think it would be reasonable for a prosecutor to say that, since the potential accused is indigenous and since the issue of residential schools and indigenous history has widespread repercussions, authorization to prosecute would be limited. I think it is difficult to do a case-by-case analysis to determine whether a given indigenous person has been a victim. It's really the use of the word “systemic” that makes it difficult. I think it's very likely that prosecutors will consider that most or all indigenous people have experienced systemic discrimination.

Let's move on to the second part of the analysis, which is the issue of public interest. I want you to explain how that happens. Let's say you get through the first step and determine that there's a reasonable chance of guilt, you have to determine whether the prosecution is in the public interest, and you have to analyze the accused's situation. The guide cites indigenous identity as one of the factors that can influence the public interest:

Crown counsel must consider the ongoing impacts of colonialism, residential schools, over-representation and systemic discrimination in the criminal justice system when the accused is First Nations, Métis or Inuit.

This relates directly to the public interest. What does this directive to prosecutors mean when they are deciding whether or not to lay charges against a first nations person?

Shannon O'Connor: It is a factor we consider. We consider the individual circumstances of the accused and the circumstances of the allegations in each case. It is always on an individual, case-by-case basis.

The Chair: Thank you, Mr. Deschênes.

[English]

That finishes the first round.

We're going to move into the second round of questioning, starting with Mr. Dawson for five minutes.

Mike Dawson (Miramichi—Grand Lake, CPC): Thank you, Mr. Chair.

I'd like to take a moment to thank Ms. Rogers for being here today.

What are the most common types of Fisheries Act violations we have identified in Atlantic Canada? Has there been any change in the trends of the violations over the last five years?

Hannah Rogers: I can't give you specific statistics at this moment. I'd be happy to get back to you with more detail.

We generally take action related to the section 36(3) provisions of the Fisheries Act, which apply to deleterious substances being added to fish-bearing water or the prospect of them going into fish-bearing water. A number of our cases are related to the general prohibition.

There are also seven regulations, as I said, under the Fisheries Act. A fair number of those in Atlantic Canada would likely be related to the waste-water regulations and to pulp and paper regulations.

I can't tell you whether I have seen a major change over the last five years. I'd want to go back through our statistics to identify whether there are trends. Again, we can get that for you.

• (0855)

Mike Dawson: Thank you.

Are there any specific internal mechanisms that exist in your department to ensure consistency in the enforcement decisions across the various regions of your department?

Hannah Rogers: There are, absolutely. Thank you for the question.

One of our major principles is consistency. We follow the compliance and enforcement policy. Our officers follow that.

We also have a database that we use on a regular basis to analyze how things are being completed. If we notice that something is potentially happening more in a particular region and less in another region, we address that immediately.

We have five regional directors across the country who are responsible for their enforcement teams, and we meet regularly to talk about consistency to make sure we are doing things consistently across all of our regions.

Mike Dawson: Are any of the cases you've identified common along New Brunswick's coast, especially along the Gulf of St. Lawrence and the Bay of Fundy?

Hannah Rogers: I would have to get back to you with specifics on that.

Maybe I can ask for a little clarification. It's common law....

Mike Dawson: I said, "common along the New Brunswick coast".

Hannah Rogers: Oh, it was "common along". Thank you.

I will get back to you on whether we can give you specifics about the coast of New Brunswick.

Mike Dawson: Okay.

How does your department ensure the accuracy and completeness of publicly reported enforcement data, such as the annual enforcement summary and enforcement notifications?

Hannah Rogers: We have a database where we maintain statistics on the actions that enforcement officers take. Every year we go through it. We have a team of data scientists as well as other analysts who make sure the data is accurate. If there are any concerns, they reach out directly to our officers to make sure those are complete and correct.

Mike Dawson: Does ECCC track long-term environmental outcomes associated with its enforcement actions, such as improvements in water quality and habitat recovery?

Hannah Rogers: That is also a very good question.

I represent the enforcement side of things. We definitely work with our colleagues across the rest of the department who are responsible for things like monitoring and cumulative effects.

What we could tell you potentially is whether there's a level of recidivism. We're not the experts in whether the actual environment has specifically changed. My colleagues in other parts of the department can answer that question.

Mike Dawson: How does your department assess risk to sensitive habitats in Atlantic Canada, such as estuaries, eelgrass beds and salmon rivers, when planning enforcement activities?

Hannah Rogers: Again, most of the actual scientific analysis is done by other parts of the department. There are biologists and other experts in the department. We certainly work with them. We look at the greatest risk to the environment and human health when we make our enforcement decisions.

We have done a number of studies, threat risk assessments and analysis, again with our data scientists, to determine what substances and what regulations and laws we should enforce to make sure we have the greatest impact.

Mike Dawson: How much time is left, Chair?

The Chair: You have 30 seconds.

Mike Dawson: All right. I'll go in the next round.

The Chair: Absolutely. Thank you very much, Mr. Dawson.

Next we will go to Mr. Klassen for five minutes.

Ernie Klassen (South Surrey—White Rock, Lib.): Thank you very much, Mr. Chair.

Thanks to the witnesses for being here today.

Ms. Rogers, do you think the penalties in the Fisheries Act are justified? Should they be changed at all?

Hannah Rogers: I understand that the penalties were last changed in 2013. I cannot provide my opinion at this forum, but my understanding is that there will be a process going forward to establish whether penalties and fines across various pieces of legislation are sufficient.

Ernie Klassen: In your opening statement, you talked about the number of penalties that were handed out. I'm just wondering whether there's any kind of penalty where the person who has broken the law would be part of reconciliation or part of restoring whatever the impact has been of breaking the law.

• (0900)

Hannah Rogers: That's a very good question.

Most of the fines and penalties that are collected as a result of prosecutions, as well as administrative monetary penalties under our other legislation, not the Fisheries Act, go to the environmental damages fund. That is run by ECCC as well. It's a separate part of the department. It basically provides money to communities to restore ecosystems and for the impacts of pollution. The funds from one particular infraction may not always go to exactly the ecosystem that was harmed. Sometimes they do, but they almost all go to restoration projects and community projects.

Ernie Klassen: Can you give us an example or two of restoration projects that the monies have been used for?

Hannah Rogers: I will give you one example. I believe some funds were provided to the Ktunaxa people in the Elk Valley of British Columbia relating to some prosecutions that took place there.

I could get back to you with my colleagues from the environmental damages fund to give you more specific examples.

Ernie Klassen: Okay.

Lastly, do you know of or could you recommend any parts of the Fisheries Act that could strengthen your enforcement?

Hannah Rogers: My role isn't to make recommendations on legislation. I'm the one who gets to go out and enforce things.

As I said, we have been looking at whether there's a possibility of using administrative monetary penalties. They are not prosecutions. Right now under the Fisheries Act, we can issue a warning letter: Don't do this again. We can issue directions, but only in cases where something is actually occurring at the moment or is very likely to occur. If a spill is happening or about to happen, we can issue ministerial orders and then we can prosecute. There's no in-between for when there's a small or a lower-medium offence that's going on.

Administrative monetary penalties, or AMPs, are something we are looking at, but I don't want to get out ahead of anybody and say it's a recommendation.

Ernie Klassen: Thank you.

Ms. O'Connor, you talked about discretion in enforcement. Are there any laws that are not enforceable, for example, with first nations communities?

Shannon O'Connor: I'm not able to speak to what an enforcement agency might do or assess for itself. What I can speak to is that if there was a question, the Public Prosecution Service would be available to provide advice to law enforcement agencies. However, there are no federal laws that I'm aware of where that is an issue, subject to, let's say, a constitutional challenge alleging the law itself is unconstitutional.

Ernie Klassen: Ms. O'Connor, are there unique challenges with respect to gathering admissible evidence for Fisheries Act offences?

Shannon O'Connor: There can be challenges in the context of complex prosecutions. They're not necessarily unique to Fisheries Act offences as compared to other environmental, regulatory, economic or criminal offences.

Some of the general challenges one might expect to see relate to charter challenges, such as whether evidence has been gathered in a manner that is consistent with charter rights or infringes on charter rights. There can also be some questions in a regulatory context about when enforcement is being conducted under an inspection hat rather than an enforcement hat. That can impact the evidence that's gathered and the charter protections that may or may not apply. That is something we train our regulatory prosecutors on, so they are always mindful of it and are able to give good advice to enforcement officers and so we can support them in staying on the right side of charter rights in those circumstances.

Those are the two I would highlight in particular. One that I will also mention, though, is the consideration of section 35 rights that arises in the context of indigenous individuals. An indigenous individual, if charged with, let's say, a Fisheries Act offence, although it's certainly not exclusive to that, may raise a defence that it's a charter right—an aboriginal or a treaty right. We will also consider that in the context of our prosecutions.

The Chair: Thank you very much, Mr. Klassen.

• (0905)

[*Translation*]

Mr. Deschênes, you have the floor for two and a half minutes.

Alexis Deschênes: Thank you very much, Mr. Chair.

Ms. O'Connor, I would like to add a request for documents to the one made by my Conservative colleague, committee vice-chair Mr. Arnold. He asked you how many investigation files have been submitted and how many investigation files have been approved since 2018. For my part, I would like to know what percentage of investigation files submitted to your service are ultimately authorized, in total. I'm not referring only to cases involving the enforcement of the Fisheries Act, but also to cases involving the enforcement of all federal legislation and the Criminal Code. Since 2018, what percentage of investigation files submitted have led to prosecutions under the Fisheries Act?

Shannon O'Connor: The request is noted. We'll certainly follow up on that.

Alexis Deschênes: Thank you very much.

Now, let's continue the discussion. Earlier, we saw that the public interest test takes indigenous identity into account. I'm going to ask a question so that people who are following our work understand.

If a white person and a first nations person are both arrested with a female lobster, which is illegal under the Fisheries Act, it is possible that a charge could be laid against the white fisher, but when it comes to charging the indigenous fisher, the prosecutor must follow the instructions and consider the identity of the accused and take into consideration the impacts of colonialism, residential schools and systemic discrimination?

Am I correct in saying that, when two individuals commit the same offence, the first nations member might not be charged because of their identity?

Shannon O'Connor: In every case, we consider all the circumstances of the alleged offence and the circumstances of the individual in question, on a case-by-case basis. Many factors are considered in determining the circumstances of the accused.

Yes, systemic discrimination and those other factors are considered not only for indigenous persons, but also for persons from other communities affected by racism or systemic discrimination. We also consider a range of factors such as the person's age and whether or not it is their first offence.

So it is one of many factors considered for each person. The circumstances always differ from case to case.

Alexis Deschênes: So it is entirely possible, if two people are in the same situation, that the indigenous person might not be charged, in light of the historical experience of indigenous persons?

Shannon O'Connor: We can't say that, hypothetically speaking. It always depends on the individual circumstances and the allegations.

Alexis Deschênes: What is stopping you from agreeing with me on that interpretation?

Shannon O'Connor: It is because prosecutors must consider the factors in each individual case. That is something I always did when I was a prosecutor. I'm still a prosecutor, but what I want to say is that when I was in charge of cases, we always looked at the individual circumstances of the accused, the circumstances of the community we were in and the circumstances of the individual allegation.

The Chair: Thank you very much, Mr. Deschênes.

Mr. Hardy, welcome to the committee today. You now have the floor over for five minutes.

Gabriel Hardy (Montmorency—Charlevoix, CPC): Thank you, Mr. Chair.

Thank you to all the witnesses for being here today.

You bring very relevant information to the committee. For the past few weeks, the committee has heard some pretty incredible evidence about the seemingly unequal application of the law. I'm referring to tolerance of commercial offences and there being almost no prosecutions. People are saying it makes no sense. It goes to the very nature and purpose of what we're doing here.

I looked at the Public Prosecution Service of Canada's guides from 2014 and 2020. Now, there is much more emphasis on identifying the person who commits a crime. In 2014, there was only one mention of first nations or indigenous people. In the 2020 guide, there are more than 20. In one instance, when an offence is committed by indigenous groups or individuals in a business that is not an ancestral right, will your directives have an influence or not?

Are you going to take into account whether it's an indigenous person, a business or something else? Is there a bias in favour of first nations?

• (0910)

Shannon O'Connor: There's never a bias in how we handle our cases. We consider each case individually, in accordance with the factors described in our guides and the case law.

Gabriel Hardy: The public interest keeps coming up. Can you define the public interest for me and tell me how it was possible to separate the public interest based on ethnic origin or the situation? You said a few seconds ago that it depends on where you are in the territory. Where does the public interest no longer apply and does it depend on the territory or ethnicity of the person committing the offence?

Shannon O'Connor: If I understand your question correctly, the public interest always applies. In many of our cases, prosecutions are in the public interest.

Gabriel Hardy: What is the public interest?

Shannon O'Connor: The public interest refers to the circumstances that require us to conduct a criminal prosecution in a criminal court, or to choose other options such as reconciliation. Let's say a young person commits a crime for the first time. It is a crime, of course, but we are not as strict. We consider whether they really need to go through the criminal justice system or whether there might be another way of managing the situation.

Gabriel Hardy: You're saying that the public interest means looking for specific characteristics that may or may not exclude a person from a prosecution. Am I understanding that correctly?

Shannon O'Connor: It's not necessarily a case of excluding them from prosecution, but rather understanding whether this type of case warrants criminal prosecution.

Gabriel Hardy: Witnesses tell us that they see almost no prosecutions for a certain type of population, whereas when it comes to them, they get a slap on the wrist every time. We agree that this inequality is not in the public interest. If the majority of people are not given that leeway and a minority are exempted from prosecution under the act, that's not the public interest; that's a systemic exception.

Shannon O'Connor: I understand your concern. When it comes up, we discuss it with the people who raise that concern.

There's one thing I can talk about because it's in the public domain now. In 2024, some people were concerned that there seemed to be a practice of not prosecuting a specific group of people, a specific type of person. We have done—

Gabriel Hardy: I'll stop you there for two seconds, Ms. O'Connor. You're confirming that you had a directive not to prosecute a particular group.

Shannon O'Connor: No, I'm talking about a concern. A question was raised to us by someone who thought that was happening.

Gabriel Hardy: Okay.

Shannon O'Connor: Our response was that it wasn't happening. We then conducted an internal investigation, in which we asked a general counsel to review a number of files to ensure that it was not happening. The investigation concluded that it was not happening. Each case had been considered individually, and prosecutions had been launched against individuals from various backgrounds.

Gabriel Hardy: Perfect.

I have a request further to the requests of two of my colleagues who asked you for information earlier. Do you have any data on the percentage of prosecutions or potential prosecutions that you handle for the same crime or the same type of crime, showing, for example, the case of an indigenous person who has committed an offence and whose case does not go any further, while the case of a white person who has committed the same offence does move forward?

Shannon O'Connor: No, we don't have those percentages. We don't keep them.

Gabriel Hardy: You don't keep them. So you have no data, you have no traceability of the offences submitted to you and the decisions you made based on the person's ethnic origin.

• (0915)

Shannon O'Connor: Allow me to answer in English to be more specific.

[English]

We don't gather that specific data and we don't have those statistics.

I can point to publicly available information confirming that in recent years, the Public Prosecution Service of Canada has continued to prosecute, pursuant to the Fisheries Act, against individuals of indigenous ancestry and individuals not of indigenous ancestry.

[Translation]

The Chair: Thank you very much, Mr. Hardy.

[English]

Next we're going to Mr. Morrissey for five minutes.

Robert Morrissey (Egmont, Lib.): Thank you, Chair.

I want to thank the witnesses with us today for providing very clear, informative answers.

I want to go back to Ms. O'Connor on the question from my colleague Monsieur Deschênes. Very specifically, he referenced a female lobster. I'm going to be clear. It was an egg-bearing female lobster, which goes to the heart of the sustainability of the lobster fishery.

Let's say two individuals were found in possession of an egg-bearing female lobster. They're 25-year-old males. One is first nations and the other is not. There are no other issues. Would there be any difference in your advice on prosecution? This speaks to the heart of the sustainability of the fishery, which the courts have upheld the minister must ultimately enforce.

Could you answer that question?

Shannon O'Connor: There will always be differences, because a decision will be made based on the individual circumstances—

Robert Morrissey: I equalized it, Ms. O'Connor. They're 25-year-olds. There are no physical or intellectual differences. They're about the same. The only difference is that one is a first nations male and the other is not. They're both holding a lobster that is viewed as illegal.

Shannon O'Connor: In those circumstances, we would consider the individual factors that are relevant to the accused. I appreciate that you're asking me to hypothesize on a situation where there's only one—

Robert Morrissey: No, I'm asking you to give me, based on that, what advice would be given on prosecution. Would you advise DFO personnel to proceed with charges the same way in both cases?

Shannon O'Connor: I apologize. Thank you for the question.

In those circumstances, it would also depend on what was going on environmentally. We would absolutely consider in our public interest assessment the factors that applied to the individual accused before us.

In the public interest, we're also considering factors such as harm to the community and the impact on the environment. There's one factor in particular, as I was—

Robert Morrissey: Ms. O'Connor, I'm going to bring you back to the fact that both individuals I described were in possession of an egg-bearing female lobster, which underpins the future of the fishery. It has nothing to do with community. If an individual can be in possession of that and not face charges against them, it undermines the whole future of the fishery. Regardless of whether you're first nation or commercial, you're impacting the future of a fishery that sustains people. I would expect prosecution to advise the department to apply the law equally.

Shannon O'Connor: We certainly consider the impacts on public confidence in a regulatory regime, the harm to a community, the harm to, for example, a sustainable fishery—

Robert Morrissey: Would the community be the overall commercial fishing community?

Shannon O'Connor: It would be the Canadian community.

Robert Morrissey: Thank you. You've come close to speaking to it.

In your opening comment, you referenced prosecuting economic crime. One thing that's in the news a lot these days is the possession of lobsters that have been acquired by cash. There's a lot of discussion in the fishing community about cash purchases going into the fishery, which is, again, undermining the future of the fishery.

Could you explain that more broadly? As you mentioned prosecuting economic crime, is it viewed as an economic crime when somebody purchases a product for cash and doesn't register that product? There's no trace of it because cash is legal, provided that it's all documented.

• (0920)

Shannon O'Connor: Generally speaking, in my opening statement, I was referring to, for example, tax evasion.

Robert Morrissey: Well, you're evading taxes if you're not recording sales and are paying with cash that never finds its way to the CRA.

Shannon O'Connor: Yes, of course.

We will absolutely consider the economic impact, though, of other criminal behaviour. When, as in this example, taxes are being evaded or when other indicators may support a reasonable prospect of conviction as it relates to the offences being alleged, we will consider those circumstances in the assessment of whether to prosecute and then how to prosecute—how to bring the evidence before the trier of fact to establish the crime that's being prosecuted.

The Chair: Thank you very much, Mr. Morrissey. That completes our second round of questioning.

We're going to start the third round of questioning online with Mr. Small for five minutes.

Clifford Small (Central Newfoundland, CPC): Thank you, Mr. Chair.

I'd like to welcome the witnesses today.

The number one purpose of the act is the conservation of fish stocks. How can effects on or damages to communities or groups supersede the prosecution of those charged, Ms. O'Connor?

Shannon O'Connor: The factors that a prosecution service considers are different. They overlap, but they are different from the legislative purpose of any particular legislation. While legislation has its policy purpose, prosecutions, as they're independent, consider a variety of factors, including the policy and community considerations that have been put forward by our parliamentarians.

Clifford Small: Has there ever been a time when a directive has been issued—say, from the PMO—to lean in a certain direction in prosecutions?

Shannon O'Connor: The short answer is no.

The Director of Public Prosecutions Act provides not only for the independence of the Public Prosecution Service but also for a relationship with the Attorney General. It is possible, pursuant to sections 10 to 13 of our act, for the Attorney General to issue a direction to the Public Prosecution Service of Canada, either generally or case-specific. It must be gazetted. It must be made public so that the public is aware of such a direction.

While there have been general principle directions issued by attorneys general in the past, there has not been a case-specific direction issued to the Public Prosecution Service of Canada.

Clifford Small: We've had some testimony about the owner-operator policy and fleet separation. Have you had any cases come across your desk related to the owner-operator policy? That policy was strengthened in the 2019 act.

Shannon O'Connor: Just one moment, please. I'm not personally familiar.

If I may ask a clarifying question, is this in relation to any inshore regulations?

Clifford Small: Yes, it is.

Shannon O'Connor: Thank you for your indulgence.

We have certainly had conversations with DFO regarding inshore regulations and investigations. I'm not able to comment further on those. I don't have more specific details on that.

Clifford Small: What factors would influence charges being laid under the owner-operator policy?

Shannon O'Connor: If there's a reasonable prospect of conviction after there's been a criminal act or violation of the law, and, of course, if it's in the public interest to prosecute, then we would proceed with the prosecution.

• (0925)

Clifford Small: When a Fisheries Act charge lands on a prosecutor's desk, does it contain information on or a description of the individual the charge was laid against?

Shannon O'Connor: It may; it may not. Certainly, we'll be able to glean information about an accused individual. Oftentimes—I

would even hazard to say most often—prosecutors learn about the individual accused over the course of the prosecution. Prosecutions take months, sometimes years, and we will always invite the defence, whether it's defence counsel or a self-represented accused, to share information, but there may not be a lot of details in an investigative file. The investigative file is generally focused on the alleged crime and the evidence that would be required to prove it.

Clifford Small: With respect to Atlantic Canada, is there a region or province that has had more charges prosecuted than any other?

Shannon O'Connor: I don't have statistics on that, but I can indicate that when charges are brought to PPSC, we are always responsive and engaging actively with investigative bodies so that we understand the file and are able to bring it forward for prosecution.

The Chair: Thank you very much, Mr. Small. I'm sorry, but the time has elapsed.

Next we'll go to Mr. Cormier for five minutes.

[*Translation*]

Serge Cormier: Thank you, Mr. Chair.

Ms. O'Connor, as you've seen, we've asked a lot of questions about first nations, fisheries and some of the incidents that have happened over the years. It is our duty to do so.

As you said earlier, it is in the interest of Canadians to have confidence in the justice system. Regardless of the colour of their skin or their ethnic origin, Canadians have the right to have trust in a justice system that is fair and equitable and upholds the laws that are on the books.

I always say that we're not going to put a young person in prison, regardless of the colour of their skin, who goes to a convenience store and steals a chocolate bar for the first time in their life. We agree on that, we can't put such a person in prison. However, if that person, no matter who they are, graduates over time from stealing a chocolate bar to armed robbery, that's a whole other story.

In the case of fisheries, which is today's topic, what concerns me is the issue of the exception. The way you put it, I don't know if that's the right term. The fact is that, for certain groups, a person's life experiences and record will be considered, among other things. There seems to be some favouritism in the treatment of certain groups.

Do you think that has anything to do with the concept of indigenuous reconciliation that the government has put forward? It's clear that we need to make those choices and have a new vision, a new way of working with those groups. On the other hand, if we start making the choices you are suggesting and the law is being violated, regardless of the person or their cultural community, don't you think that will undermine Canadians' confidence in the justice system?

Shannon O'Connor: I completely agree that it is very important. It is essential to the Public Prosecution Service of Canada, the PPSC, that the public has confidence in the justice system. We also thank you for inviting us here to ask us these questions.

There is no favouritism in the way PPSC conducts prosecutions and makes decisions. We make decisions based on the personal circumstances of the accused that are presented in their case. We consider a great many factors in each case, as well as everything related to the alleged crime. As you pointed out, a person's past history is very important and that is indeed one of the factors we consider. It is very important for the public to understand and trust the justice system.

We also understand that there are sometimes questions about how we establish our processes and conduct prosecutions. When possible, we communicate with victims, communities and investigatory agencies. In many cases, we cannot provide details about our decisions because that information is confidential. I can tell you something that the media in the Atlantic provinces have reported: there are at least 50 prosecutions involving indigenous persons under the Fisheries Act.

• (0930)

Serge Cormier: Like my colleagues, I would also like to see your files, your investigations, or even documentation on prosecutions under the Fisheries Act, for the years 2006 to 2015.

Ms. Rogers, I'm not forgetting you. When it comes to enforcing the Environment Act, let's say there is fish plant that is dumping waste water or chemicals into the bay or the sea. Would that be your responsibility or the province's responsibility?

Hannah Rogers: If that water goes directly into waters where there could be fisheries, then it's our responsibility.

Serge Cormier: Similarly, if the province issues the licence to operate those plants, is it responsible nonetheless? Based on your recommendations, would the province revoke the license, or would you be able to do so at your end?

Hannah Rogers: In general, in the case of a provincial licence, the province is responsible for ensuring compliance with the provisions of the licence.

Serge Cormier: Do you test the water or would it be the province?

The Chair: Mr. Cormier, I'm sorry, but your time is up.

Serge Cormier: Sorry, I thought I had six minutes.

The Chair: You had five minutes.

We'll now go to Mr. Deschênes for two and a half minutes.

Alexis Deschênes: Thank you, Mr. Chair.

Ms. O'Connor, you mentioned earlier that an internal investigation was conducted to determine whether certain groups were excluded from prosecution. So in addition to the previous requests for documents, I would also request those concerning this investigation.

Shannon O'Connor: Let me clarify the nature of the documents you're asking for.

Alexis Deschênes: You mentioned that an internal investigation was conducted within the Public Prosecution Service of Canada to determine whether certain groups were less subject to charges than others. You said the investigation determined that that was not the case. So I'm asking you to provide us with the investigation report.

Shannon O'Connor: The Public Prosecution Service of Canada is not allowed to share those records. In that particular instance, we were not the ones who shared the information with the media.

Alexis Deschênes: But was that report produced internally or within your department?

Shannon O'Connor: Yes, but it's a report that was prepared for our former deputy director.

Alexis Deschênes: Since it is a report that was produced by your department and there were media leaks—which is another story—I'm asking you to provide it to us.

Shannon O'Connor: I will take note of your request and discuss it with our director.

Alexis Deschênes: Thank you, Ms. O'Connor.

I also understand your reluctance to answer the question I asked you earlier, which Mr. Morrissey insisted upon. However, I would encourage you not to think about political repercussions. I think your role here is really to explain the operating rules to us.

Based on what we hear from fishery officers on the ground, they tell us confidentially that they are being directed to be more tolerant of first nations members, sometimes even not to intervene. Sometimes they are told that it is too complicated. We would like to understand what is behind this.

Looking at your guide, it is clear that prosecutors must take indigenous identity into consideration. I just want you to confirm that. You don't deny that, I think, because your guide says, in black and white, that "Crown counsel must consider the ongoing impacts of colonialism, residential schools, overrepresentation and systemic discrimination in the justice system." It goes on to say: "These factors may shed light on the accused's moral culpability, and may weigh against a prosecution when considered with the totality of the relevant factors."

So, do we agree that, under the current system, comparing an indigenous offender and a white offender when all the other facts are the same, the prosecutor will take an extra step to see whether, given the long history of the first nations, charges should not be laid?

• (0935)

The Chair: Your time is up.

Ms. O'Connor, we would appreciate a written reply, if you would be so kind.

[English]

Next we have Mr. Arnold for five minutes.

Mel Arnold: Thank you, Mr. Chair, and thank you, witnesses, for providing the clarity you have so far.

Ms. O'Connor and Ms. Beauchamp, it's important that we as legislators understand how PPSC decides who to prosecute and who not to prosecute.

You work independently for the prosecution of Canada's laws. Is that correct?

Shannon O'Connor: Yes, that is correct.

Mel Arnold: In order to do your work effectively, I assume that your work is guided by knowledge of Canada's laws. Is that correct?

Shannon O'Connor: Yes, all prosecutors are familiar with Canada's laws.

Mel Arnold: I believe earlier you stated that you're not necessarily privy to all bylaws and laws and that they may be provided by DFO C and P staff at the time of your discussion over prosecution. Did I hear correctly that you are not privy to all of the bylaws and laws?

Shannon O'Connor: Yes, That's in the sense that we may not individually be familiar with all the bylaws. I think it's also important to understand the nature of PPSC's jurisdiction, which is to prosecute federal offences. Our jurisdiction is to prosecute, for example, based on the Fisheries Act and the regulations associated with the Fisheries Act.

Mel Arnold: Are there bylaws that permit certain actions that are not permitted within the Fisheries Act? How would that apply?

Shannon O'Connor: If the public prosecution does not have jurisdiction to prosecute those, they would not be brought to us for prosecution.

Mel Arnold: So DFO C and P staff may or may not have access to bylaws and laws that are deemed equivalent or sometimes superior to the Fisheries Act. Is that correct?

Shannon O'Connor: I'm not able to speak to what DFO officers will or will not have access to.

Mel Arnold: How does PPSC determine if an alleged offence merits a charge if PPSC does not know the laws and regulations that could be applicable?

Shannon O'Connor: If there are other, for example, bylaws that may be viewed as in contravention or may be in contravention to the Fisheries Act or a regulation, we will certainly assess that. That can be a very complicated legal question, but we will certainly assess the circumstances as they relate to the constitutionality of those

laws and the primacy of them—which law would be taken into account.

We would, where appropriate, work with Department of Justice colleagues to obtain their expertise in that area, because the applicability of laws and the supremacy of laws are questions for the Department of Justice. Their expertise would be required and provided to inform how we exercise our prosecutorial discretion. That's a relationship we have and certainly avail ourselves of to ensure we have the appropriate expertise on these very complicated legal questions.

Mel Arnold: So you would be provided with the bylaws and laws that are outside of the Fisheries Act.

Shannon O'Connor: Where there is a suggestion that laws may not be applicable.... I use that term very carefully, because a decision would be made, for example, by a court. It's not for the Public Prosecution Service of Canada to decide which law is valid.

We have partnerships with, for example, the Department of Justice that allow us to lean on their expertise and get the information we need to make the appropriate decision.

Mel Arnold: That's interesting, because as democratically elected members of this committee, we've been denied access to agreements, bylaws and so on that may be applicable in relation to fisheries activities. They're out there and may be affecting how Canada's laws are applied, yet as the legislators responsible for reviewing the Fisheries Act and providing any recommendations for any changes to the act, we are not aware of the bylaws and other laws that may be out there affecting the conservation of our fish stocks.

• (0940)

Shannon O'Connor: I can't speak to the provision of information by different departments, and I certainly don't want to be misinterpreted in suggesting that we may be provided with information that's not otherwise available. I would have to know about specific instances of what information has been provided in specific cases.

The Chair: Thank you very much, Mr. Arnold.

Next we're going to Mr. Connors, who is online, for five minutes.

Paul Connors (Avalon, Lib.): Hi. Thank you very much to the witnesses for coming out. It's certainly an interesting discussion.

Ms. O'Connor, you mentioned that there are, I think, 75 acts and a number of regulations you have to interpret when you're moving forward with a prosecution. Are there prosecutors who specialize in the Fisheries Act today? Is there anyone who specializes, or is this a case-by-case process?

Shannon O'Connor: We do have regulatory and economic teams across the country, and those prosecutors will specialize in the prosecution of regulatory offences. Where there's perhaps a higher volume of, say, Fisheries Act cases, we'll absolutely develop an expertise and a specialty in that type of prosecution.

We have expertise centrally in our headquarters, as well as regionally, to ensure the highest quality standard of prosecutorial excellence when bringing forward these files.

Paul Connors: I want to go back to what I think Mr. Small mentioned—that conservation and sustainability are some of the key factors or purposes of the Fisheries Act. Then Mr. Morrissey gave you an example of an identical situation, and the only thing different was first nations....

I'm wondering how, for a violation under the Fisheries Act, it would not be considered in the public's best interest to move forward with prosecution.

Shannon O'Connor: In considering the public interest in prosecuting a violation of the Fisheries Act, we would consider a variety of factors that include the harm to the community. I'm saying community, but it could be the harm to the environment or the impact an alleged offence has had on the environment. Sometimes it is small; sometimes it is significant, and that plays a role in our assessment. This is, of course, not to say that where it is small, a prosecution is not in the public interest. It is one of many factors we take into consideration. We also consider whether the prosecution of an offence would maintain public confidence in the regulatory regime.

Paul Connors: Okay, thank you.

Are there times when DFO officers disagree with a prosecutor or your department about moving forward with prosecution?

Shannon O'Connor: Yes, that does occur. We develop, and we believe very strongly in the importance of, an open dialogue.

Because of the nature of our independence, investigative agencies—in this case we'll say DFO, because that's what we're talking about—may make decisions that we would not have made. That's in their independent discretion to do, and we may make decisions that they would not have made, and that's in our independent discretion to do.

However, when we do so, we ensure that we have conversations and dialogue to understand each other's perspectives, and we take them into consideration in our decision-making. We will also discuss those decisions afterwards, and we will do the same with my colleague to ensure that we have an open dialogue and a collaborative relationship appropriately within our independent spheres.

• (0945)

Paul Connors: But the ultimate decision would come down to your department. It would make the final decision if it would go forward.

Shannon O'Connor: Yes, it would on whether to proceed with or continue a prosecution.

Paul Connors: From your department's perspective, are there aspects of the Fisheries Act that are redundant and may cause you to not move forward or may cause delays in your ability to act better?

Can you identify or see anything that might need to be changed in the act in order to get convictions?

Shannon O'Connor: It is important to the Public Prosecution Service that we are available, whether it's to departments or committees, to provide information about the prosecutorial impact of particular legislation that's being considered for amendment, or new legislation. It is not for us to usurp the role of parliamentarians in making policy decisions about how acts should be changed, but if they are being contemplated, we are available to answer questions about what the impact on prosecutions may be of particular amendments, absolutely.

Paul Connors: Would it be your role to make recommendations where you see something that is not working in the act or is redundant in the act in order to help us make better decisions?

Shannon O'Connor: Part of the importance of our independence is that we not overstep into the policy lane of the Government of Canada and that we keep on the prosecutorial side. Certainly, we can share with our colleagues at departments about, for example, how an amendment might impact a prosecution, making it either easier or more difficult to tender evidence or establish an offence beyond a reasonable doubt.

The Chair: Thank you very much, Mr. Connors.

That finishes the third round. We're starting the fourth round with Mr. Arnold.

Mel Arnold: Thank you, Chair. I'll use a minute or two, and then I'll pass it on to my colleague Mr. Hardy.

Ms. O'Connor, I want to go back to the question on how other laws and bylaws may impact the enforcement of and prosecution under the Fisheries Act. How does PPSC determine if an alleged offence merits a charge if PPSC does not know all of the laws and regulations that could be applicable?

Shannon O'Connor: PPSC is absolutely familiar with all of the federal laws and regulations that we have jurisdiction to prosecute. If there is, say, a bylaw pursuant to the Indian Act that may be viewed as in conflict, we would be sure to consult with constitutional experts to determine—

Mel Arnold: What about other laws and bylaws that are outside of Canadian or parliamentary legislation?

Shannon O'Connor: Just to clarify, is this about a prosecution pursuant to the Fisheries Act—a federal law—and another law is in conflict with it, or is it about prosecuting other laws?

Mel Arnold: I mean both.

Shannon O'Connor: In terms of the prosecution of other laws, that is likely not our role. It may be, for example, for the provincial prosecution service.

Mel Arnold: That's fair enough.

Shannon O'Connor: It is not the Public Prosecution Service's role to determine the validity of a law that would be brought before a judge.

There was a question on the impact when there are arguably contradictory laws. In those circumstances, one avenue, probably a very common avenue, to resolve that would be to prosecute the file, and if the defence raised that before the judge as a defence, we would bring forward the prosecution aspect, the defence would bring forward the defence aspect and a judge would rule.

Mel Arnold: Okay, so how do we solve the conundrum that we as legislators don't have access to those other bylaws and laws?

Shannon O'Connor: I can appreciate the frustration. It's unfortunately not for PPSC, as an independent prosecutorial authority, to provide advice or solutions in that circumstance.

Mel Arnold: Okay, thank you.

I'll pass my time to Mr. Hardy.

The Chair: You have two and a half minutes.

[Translation]

Gabriel Hardy: Thank you very much.

Ms. O'Connor, I just want to come back to what you said earlier, that there is no favouritism in your decisions. I find that interesting because, from 2014 to 2020, that is, when the old guide was in effect, there was no concept or reference to the first nations. However, as of 2020, as a result of overrepresentation, as you said earlier, the guide includes 20 such references.

How can you be sure that those new references, whose objective is specifically to reduce the number of first nations arrests, are effective if you don't have data on the number of proceedings that are successful or not? How can you measure the impact, if any, of adding 20 more references to the first nations?

• (0950)

Shannon O'Connor: We look at the specific circumstances of each case. For us, success means bringing a case to court when the criteria for deciding whether to prosecute have been met.

Gabriel Hardy: However, the original intent when these elements were included in the guide was to reduce first nations representation in arrests and prosecutions, was it not?

Shannon O'Connor: The objective is to ensure that, when assessing all the circumstances of a case, our prosecutors consider this factor before making a decision.

Gabriel Hardy: Then the goal is for them to consider it to reduce representation. Therefore, if you introduce an element that results in a Quebecker, a Canadian and a first nations person being treated differently, you can't say that there's no favouritism or bias towards first nations. Do you agree?

Shannon O'Connor: I respectfully disagree. There is no favouritism in our decisions. The PPSC acts in accordance with its role and responsibilities within the criminal justice system. We're trying not to contribute to the overrepresentation of indigenous people in the criminal justice system. We play a role in that.

The Chair: Thank you very much, Mr. Hardy.

[English]

Next we will go to Mr. Morrissey for five minutes.

Robert Morrissey: I have a question for Ms. Rogers.

You referenced roughly \$14 million in fines under environmental infractions. Is that correct?

Hannah Rogers: Those are under the Fisheries Act, yes.

Robert Morrissey: The charges were under the Fisheries Act, but were they related to environmental infractions?

Hannah Rogers: We enforce the Fisheries Act, the Canadian Environmental Protection Act and other legislation. I don't have the fine amounts specifically under each one, but—

Robert Morrissey: These were for environmental infractions, not fishery infractions.

Hannah Rogers: Yes—not for habitat or commercial fisheries.

Robert Morrissey: Often you'll hear that the courts will lay a charge and impose a fine, but then nobody pays it. In this case, are those fines realized?

Hannah Rogers: Yes. These are the result of prosecutions, so they are collected.

Robert Morrissey: Are you sure of that?

Hannah Rogers: I would have to go back and confirm that every single penny was collected.

Robert Morrissey: It doesn't have to be down to the penny, but—

Hannah Rogers: In general, we do not have concerns about the fines being collected from prosecutions.

Robert Morrissey: On the fishery side, that's not the case. Often a fine will be imposed by the courts and it's laissez-faire whether it's collected or not.

Thank you for that.

Ms. O'Connor, who makes the final decision on proceeding with charges? Even if the public prosecution branch was advised not to, who makes the final decision?

Shannon O'Connor: It depends on the jurisdiction. We have some jurisdictions in Canada that are called precharge approval jurisdictions where police forces and regulatory enforcement come to us before charges are laid and we approve them or not by applying our decision-to-prosecute test.

That's the minority of jurisdictions. There are really three, and some have those areas within their jurisdictions. The majority are not precharge approval jurisdictions, and therefore the police or enforcement agencies can lay charges and often do lay charges before consulting.

Robert Morrissey: Specific to DFO, are the charges being laid by DFO under the Fisheries Act?

Shannon O'Connor: The same applies. In some jurisdictions it is us, in the sense of a precharge approval. Nova Scotia, for example, is not a precharge approval jurisdiction, so DFO officers can and do lay charges there. The file is then brought to PPSC.

• (0955)

Robert Morrissey: Are you leading me to believe that in some jurisdictions, a provincial jurisdiction would override DFO's ability to lay charges?

Shannon O'Connor: No. I apologize if I was unclear.

What I meant is that in a precharge jurisdiction, a DFO officer would come to the prosecution service that has jurisdiction to prosecute that particular offence. For Fisheries Act offences, it is the Public Prosecution Service of Canada across the country. They would come—

Robert Morrissey: Okay, so the decision is solely between the Public Prosecution Service and DFO—

Shannon O'Connor: Yes.

Robert Morrissey: —which makes the final decision.

Okay. Thank you.

You referenced earlier that there's been no case-specific direction from any elected official.

Shannon O'Connor: It's specifically the Attorney General, who is the—

Robert Morrissey: They hold a different capacity when they assume that office.

Shannon O'Connor: Yes.

Robert Morrissey: You referenced that if direction were given on the policy side, it must be public.

Shannon O'Connor: Yes, any direction provided by the Attorney General—

Robert Morrissey: That's the only way that direction from an elected official could be given in any case.

Shannon O'Connor: That is correct. That is one of the—

Robert Morrissey: Okay.

Shannon O'Connor: I'm sorry. I didn't mean to interrupt you.

Robert Morrissey: No, that's fine.

Shannon O'Connor: That is one of the important pieces of prosecutorial independence.

Robert Morrissey: Often we'll hear gossip on the street that a charge was dropped because somebody talked to somebody. From your experience, and in testimony to this committee, that does not exist.

Shannon O'Connor: That does not exist, no. There is no power for anyone other than the Attorney General to direct the Public Prosecution Service on how to bring forward a prosecution.

Robert Morrissey: Okay. Thank you.

Chair, that concludes my questions.

The Chair: Thank you very much, Mr. Morrissey.

[*Translation*]

Mr. Deschênes, you have the floor for two and a half minutes.

Alexis Deschênes: Thank you, Mr. Chair.

Ms. O'Connor, I gave a long preamble earlier, and I didn't leave you time to answer, so I'd like to give you the opportunity to do so. I'd also like to clarify my question. Based on your guidelines, can the indigenous identity of a suspect be a reason not to lay charges under the Fisheries Act?

Shannon O'Connor: It depends on the circumstances.

Alexis Deschênes: Can the indigenous identity of a suspect be a reason not to lay charges, yes or no?

Shannon O'Connor: As I said earlier, an indigenous person's rights, such as the right to self-determination set out in section 35 of the Constitution, can be considered.

Alexis Deschênes: I don't understand why you don't want to agree with me, Ms. O'Connor, or why it's so difficult. I'm quoting from the indigenous identity section of your guide, which says, "These factors may shed light on the accused's moral culpability, and may weigh against a prosecution when considered with the totality of the relevant factors."

Again, can the indigenous identity of a suspect be a reason not to lay charges under the Fisheries Act?

Shannon O'Connor: It depends on the circumstances.

Alexis Deschênes: That's a weird answer, because your guide says that it must be considered, and that it can help prevent charges from being laid. Don't you read it the same way I do?

Shannon O'Connor: Just to make sure my answer is clear, I'm going to answer in English.

[*English*]

The indigenous identity of an accused is one factor we will consider. It is not an overwhelming factor. The role that it plays, while always important... The weight it will be given depends on the facts and circumstances of the alleged offence.

There's some Supreme Court of Canada legislation—I believe the case is Wells, which followed the Gladue case from approximately 20 years ago—that helps inform how that factor is considered in a particular case.

[Translation]

Alexis Deschênes: Yes, there's also the Gladue case, but what I'm asking you is whether that can be a reason not to lay charges, not whether it still applies. Can an individual's indigenous identity be a reason not to lay charges against them?

Shannon O'Connor: It's one factor among others that could lead to such a decision.

The Chair: Thank you very much, Mr. Deschênes.

Mr. Hardy, you have the floor for five minutes.

• (1000)

Gabriel Hardy: Thank you very much, Mr. Chair.

There are a lot of discussions going on today, Ms. O'Connor. I have a quick question for you: Who writes the guide?

Shannon O'Connor: Several experienced prosecutors collaborate on the guide, but ultimately it's approved by the director of the Public Prosecution Service of Canada, the PPSC.

Gabriel Hardy: Who suggested that indigenous communities should be mentioned 20 times more often in the 2020 guide than in the 2014 guide?

Shannon O'Connor: The PPSC director had the final say regarding the new guide.

Gabriel Hardy: There seems to be a fairly close connection between government policies and those included in the guide since 2015. Is there political influence as to how the laws and the guide are applied?

Shannon O'Connor: No, absolutely not.

Gabriel Hardy: There's no political influence or connection. Can you guarantee your work is not influenced by any political guidance, whether formal or informal?

Shannon O'Connor: Allow me once again to speak in English to make sure I'm clear.

[English]

There is no political influence in the Public Prosecution Service's desk book, or in the guidelines issued by the director of public prosecutions. The Public Prosecution Service absolutely considers public safety, the concerns of Canadians and a variety of other factors when establishing, applying and revising its policies.

We consider the communities we live in and the communities we prosecute for. We do not take political direction. There's not political influence in how the director advises, guides and directs prosecutors.

[Translation]

Gabriel Hardy: What you're saying is it would be coincidental if the political side and the criminal prosecution side aligned to create some form of favouritism. Witnesses are telling us that it's totally political. I can quote others that say things are very lax, and that there are no fines or consequences. I'm not the one saying it. That's the perception of people on the ground. They feel disadvantaged. We were talking earlier about working for the entire population, but people on the ground feel there is no favouritism.

Do you think public opinion and perception need to be changed, and that something needs to be done? Canadians and Quebecers are starting to think that something's not right, and that the laws benefit some people more than others who always get their wrists slapped. Is it your office's responsibility to make sure everyone's treated equally?

Shannon O'Connor: Our responsibility is to ensure Canadians still trust the criminal justice system. Actually, we'd like to thank you for inviting us here to answer your questions, and to explain how we initiate prosecutions. We take into consideration what's happening in the communities where we initiate prosecutions. It allows us to understand the consequences of decisions, and to understand what's going on in the communities to keep them safe.

Gabriel Hardy: I'm really glad you're here, because it's also important for you to understand that sometimes you're in your own little world, managing things, focused on laws, commas, periods and so on.

Meanwhile, we're hearing about inequalities. Witnesses are saying it makes no sense, and I think it's important for you to know that. You're witnesses, but we're hearing from those who are witnessing those inequalities. Take note of that, because the witnesses we heard from don't seem to agree on the guidelines you talked about. They're talking about inequality and political interference.

You said earlier that things are not always the same from one region to the next. If I'm not mistaken, you said you evaluate different criteria, such as the region itself, ethnic origin, and so on. In your opinion, and I do mean your opinion, not what the law says, should the region really be considered when it comes to enforcing a law that protects nature and our resources? Would it be okay to say yes for a region, but be more lenient towards another region and say no, go ahead? Would that be a good way to do things?

Shannon O'Connor: I'm not suggesting there's a difference depending on the region. Let's say there are many violations of the Fisheries Act, and that they are impacting the sustainability of fisheries. We could determine that it's in the public's interest to prosecute to avoid an environmental impact or other somewhat similar consequences. Risk levels change.

• (1005)

Gabriel Hardy: Isn't it risky to make distinctions between regions? Don't you think we should have laws that are clear, simple, specific and easy to enforce?

The Chair: I'm sorry, Mr. Hardy, your time is up.

A very short answer please.

Emma Beauchamp: Thank you, Mr. Chair.

I just want to clarify one thing. I think we're trying to formulate rules based on abstract situations. When it comes to specific cases and specific facts, our role is to make a decision regarding prosecution. We don't base our decisions on trends or the regions. We take into consideration the geographic factors and the nature of the species harvested in the region. Multiple factors will influence our decision to prosecute, but we are not guided by abstract trends.

The Chair: Thank you very much, Mr. Hardy.

[English]

Next we're going to Mr. Klassen for five minutes.

Ernie Klassen: Thank you very much to the witnesses.

We are talking about public perception and the fact that there appear to be different rules for different people in different circumstances.

Is there any kind of public education going on? How can we have the public understand how these rules are being enforced?

Shannon O'Connor: The Public Prosecution Service doesn't have formal public education. In the communities where we live and work and where we bring prosecutions, we have relationships with community stakeholders and a dialogue to ensure that we are understanding what's going on in those communities, in those jurisdictions.

Prosecutions are brought forward in the public sphere, so a lot of information is able to be shared about a prosecution and an alleged offence through the prosecution process itself.

Ernie Klassen: If the rules change, which obviously sometimes occurs when we make different policies here—for example, as we're reviewing the Fisheries Act—how do the people out in the field find out that something has changed?

Hannah Rogers: Perhaps I can address that.

I do not work for this part of the department, but we do have a group that does compliance and promotion. When there is a new piece of legislation or new regulation or there are amendments to a regulation, they share information with the public.

They tend to determine who that regulatee group is. It could be a small industry group, for example, running particular types of factories, or it could be a much larger percentage of the population. They will provide information to the public on those changes.

Ernie Klassen: I'm curious about your thoughts on whether there are too many grey areas within what we've just been hearing about—that you may make decisions based on circumstances. Should the rules be tightened up further than they are so there isn't as much discretion available to the people who are enforcing the rules?

Hannah Rogers: I don't think I can pronounce on whether we have.... We don't necessarily have opinions on the way the legislation is written, but when legislation or regulations are being developed or amended, our officers provide advice and guidance to those developing the regulations and legislation to make sure they're enforceable. We are directly involved in that regulatory process when it occurs.

Ernie Klassen: Ms. O'Connor, in relation to international laws and the enforcement of the Fisheries Act, what is the collaboration between DFO and international laws?

Shannon O'Connor: I'll be able to speak only to how that might impact a prosecution, because it would be for ECCC or the Department of Fisheries to advise about how they may consider that in their enforcement. When a prosecution comes to the PPSC pursuant to Canada's laws, that's the jurisdiction in which we prosecute.

Ernie Klassen: Thank you so much.

The Chair: Thank you very much, Mr. Klassen.

Looking at the time, I see that we have about five minutes, so to wrap up, I want to give one question to each party, and then that will be all the time we have.

Mr. Small, if you have one question you'd like to ask to wrap us up, go ahead.

• (1010)

Clifford Small: Thank you, Mr. Chair.

Ms. O'Connor, is it possible that some decisions you make in prosecutions could be watering down the intent of the Fisheries Act in terms of conservation?

In terms of ethnicity and whatnot, I heard you say that you didn't want certain groups to be overrepresented in prosecutions. Is it possible that there comes a time when the resource becomes at risk and conservation is thrown out in favour of wanting to maintain ratios with certain ethnicities?

Shannon O'Connor: For the independence of the prosecutorial function, while we of course consider a variety of factors that impact communities, public safety and the well-being of Canadian society as a whole, we assess our files individually in accordance with the factors that are published and publicly available in our desk book.

To the extent that there may be policy concerns and impacts, that is for the honourable members of this committee and our elected officials to determine. Importantly, the prosecutorial service will stay within our prosecutorial lane in making decisions on individual files, once again ensuring, as I've communicated to this committee, that we consider a wide variety of factors and impacts on Canadians when we're making our prosecutorial decisions.

The Chair: Thank you very much, Mr. Small.

I have a question I'd like to ask from our side.

Ms. Rogers, earlier on, near the beginning of this meeting, you mentioned the potential for having administrative monetary penalties, or AMPs.

I know it's maybe not your role to give advice on how the act should be amended, as you're involved in enforcing it, but I was hoping you could share with this committee how bringing in these types of penalties would be helpful in ensuring better enforcement and deterrence with some of the Fisheries Act violations and better outcomes on the ground.

Hannah Rogers: I can speak from my experience in enforcing the Canadian Environmental Protection Act.

We have administrative monetary penalties for certain sections of that act. It gives us a different tool that does not require us to go through the whole court process. It is not a ticket per se, but from a layperson's perspective, it is somewhat like a ticket. If there is a low- to medium-risk infraction, we can provide an administrative monetary penalty that brings the regulatee back into compliance.

It doesn't take the same level of resources it does to work with our colleagues at PPSC. We very much appreciate their work, but that's a long and potentially resource-intensive process. It costs a lot of money. It takes a lot of time.

An AMP is fairly quick. We have processes to make sure we issue AMPs in a consistent and orderly manner, but they give us a tool that we can use on a more regular basis for the smaller and medium offences. Otherwise, we're generally issuing warning letters for those offences.

AMPs would produce a more efficient and effective ability for us to enforce the laws we have, as we do under CEPA. Again, I'm not suggesting this is a route.... This would be for parliamentarians and for the policy- and decision-makers to decide, but that has been our experience under CEPA. It's given us another tool.

We've seen the number of AMPs we've issued go up over the years as our officers have become familiar with them, and it has certainly made an impact on our enforcement abilities under CEPA.

The Chair: Thank you very much, Ms. Rogers.

[*Translation*]

Finally, I'll give the floor to Mr. Deschênes for one question.

Alexis Deschênes: Thank you, Mr. Chair.

Ms. O'Connor, at the end of this study, the committee might propose amendments to the guide, because according to many partners in the fishing industry, fisheries officers, and even an Innu I spoke to in the Côte-Nord region fisheries, the differentiated approach may not be the best. They want those who violate the law to be fined or prosecuted.

If we were to propose an amendment to the guide to make sure that the law is applied more consistently, that charges are laid, and that the indigenous identity test is applied differently, would that raise any constitutional issue?

● (1015)

Shannon O'Connor: Just to be clear, are you talking about the guidelines in our guide?

Alexis Deschênes: Yes.

Shannon O'Connor: According to the act, only the Attorney General can give us guidelines.

Alexis Deschênes: If the committee tabled a report recommending that the guidelines be changed, and if the Minister of Justice sent you new guidelines to consider the indigenous identity differently, would you see any constitutional issue?

Shannon O'Connor: That would be a question for the Department of Justice. I'm not an expert in constitutional law.

The Chair: Thank you, Mr. Deschênes.

[*English*]

That will complete our panel for today. I want to thank our witnesses for being here for a full two hours to take questions. Your testimony is going to be very helpful as we're finalizing our report on the review of the Fisheries Act and, importantly, its implementation.

Our next meeting is going to be on Thursday, December 4, when we'll continue our additional meetings on the review of the Fisheries Act.

With that, I'm going to adjourn the meeting.

Thanks, everybody.

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